



# **COMMONWEALTH of VIRGINIA**

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Secretary of Natural Resources

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## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MW Manufacturers Incorporated**

**Registration No. 30386**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and PlyGem Windows for the purpose of resolving certain violation(s) of the Virginia Air Pollution Control Law, and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" or MW Manufacturers means the MW Manufacturers Incorporated facility located at 433 North Main Street, Rocky Mount VA.
7. "MW Manufacturers" means MW Manufacturers Incorporated., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. MW Manufacturers Incorporated, is a "person" within the meaning of Va. Code § 10.1-1300.
8. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 10.1-1309.
9. "O & M" means operations and maintenance.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
11. "Permit" means the Title V Permit to construct and operate which was issued under the Virginia Air Pollution Control Law and the Regulations to MW Manufacturers Incorporated on October 11, 2007.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. MW Manufacturers owns and operates the Facility in the town of Rocky Mount, Virginia. The Facility manufactures windows for residential and commercial use.
2. The Facility is the subject of the Permit, which grants authorization to operate a Stationary Source of Air Pollution.
3. On August 12, 2010 staff conducted a Full Compliance Evaluation of the Facility to determine compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and Regulations. Based on the inspection and follow-up information, department staff made the following observations:

- a. MW Manufacturers installed a new spray booth on April 28, 2010
  - b. The spray booth has been operational since the date of the installation
4. 9 VAC 5-80-1120 A. states that "No owner or other person shall begin actual construction, reconstruction, or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source".
  5. On September 14, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No.7715 to MW Manufacturers for the violations described in paragraphs C (4) above.
  6. On September 21, 2010, MW Manufacturers contacted the department via electronic mail requesting a conference call to discuss the NOV issued September 14, 2010.
  7. Based on the results of August 12, 2010 inspection, and the information acquired on September 24, 2010 during a conference phone call between MW Manufacturers and the Department, the Board concludes MW Manufacturers Incorporated has violated 9 VAC 5-80-1120 A. as described in paragraphs C(4), above.
  8. In order for MW Manufacturers to return to compliance, DEQ staff and representatives of MW Manufacturers Incorporated have agreed that MW Manufacturers shall pay a civil charge as described in Section D of this Order.
  9. A Form 7 Permit Application for the spray booth was received by the Department on September 27, 2010.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders MW Manufacturers Incorporated and MW Manufacturers Incorporated agrees to:

1. MW Manufacturers Incorporated shall pay a civil charge of \$7,142 within 30 days of the execution of this Order in settlement of the violation cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

MW Manufacturers Incorporated shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of MW Manufacturers Incorporated for good cause shown by MW Manufacturers Incorporated, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, MW Manufacturers Incorporated admits the jurisdictional allegations, and agrees not to contest, but neither admit nor deny the findings of fact and conclusion of law in this Order.
4. MW Manufacturers Incorporated consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. MW Manufacturers Incorporated declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by MW Manufacturers Incorporated to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

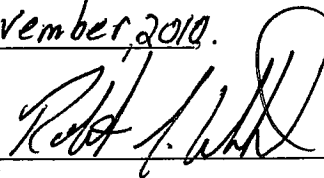
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. MW Manufacturers Incorporated shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. MW Manufacturers Incorporated shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MW Manufacturers Incorporated shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which MW Manufacturers Incorporated intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on MW Manufacturers Incorporated hereto, its successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and MW Manufacturers Incorporated. Nevertheless, MW Manufacturers Incorporated agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. MW Manufacturers Incorporated petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to MW Manufacturers Incorporated.

12. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve MW Manufacturers Incorporated from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. Any plans, reports, schedules or specifications attached hereto or submitted by MW Manufacturers Incorporated and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
14. The undersigned representative of MW Manufacturers Incorporated certify that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind MW Manufacturers Incorporated to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of MW Manufacturers Incorporated.
15. This Order constitutes the entire agreement and understanding of MW Manufacturers Incorporated concerning settlement of the violation(s) identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between MW Manufacturers Incorporated other than those expressed in this Order.
16. By its signature below, MW Manufacturers Incorporated voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18<sup>th</sup> day of November 2010.



Robert J. Weld,  
Regional Director, Blue Ridge Regional Office  
Department of Environmental Quality

MW Manufacturers Incorporated, voluntarily agrees to the issuance of this Order.

Date: 11/12/2010 By: [Signature]  
Josh DeAtley,  
Director of Environmental Services  
MW Manufacturers Incorporated

Commonwealth of Virginia  
City/County of Bryan/Brazos

The foregoing document was signed and acknowledged before me this 12<sup>th</sup> day of  
November, 2010, by Josh DeAtley who is Director of Environmental Services for  
MW Manufacturers Incorporated.

Trisha Kay Deluna  
Notary Public



Notary Seal

My commission expires: June 7, 2013